IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI.WRIT PETITION NO.1151 OF 2003

WITH

CRI.W.P.NOS.1152,1153,1154,1155,1156,1157,1158,1159,

1160,1161,1162,1163,1164 OF 2003

Pradyumna Natvaralal Shah .. Petitioner.

V/s.

M/s. Rahul Rayon & Ors. ..Respondents.

WITH
CRIMINAL WRIT PETITION NOS. 592 OF 2004, 593, 594,595,596,597,598,599,601,602,603 OF 2004

Nayan Lalitrai Modi .. Petitioner.

V/s.

M/s. Rahul Rayon & Ors. .. Respondents

WITH
CRIMINAL WRIT PETITION NOS. 604 OF 2004, 605,606,607 OF 2004

Nayan Lalitrai Modi .. Petitioner

V/s.

M/s. Sunita Rayon & Ors. .. Respondents

WITH
CRI. WRIT PETITION NO. 824 OF 2004

Nayan Lalitrai Modi .. Petitioner

V/s.

M/s. Luv Kush & Ors. .. Respondents

Ms. Nimish Pandya i/by Pandya & Co.for Petitioner.
Mr. Narendra Jain for Respondent No.1.
Mr. D.R.More, APP for Respondent No.11.

CORAM : A.M.KHANWILKAR, J.
DATED : 12.10.2004

PC :-

. Rule. Rule made returnable forthwith. By consent heard finally.

2. Shri Narendra Jain waives notice for Resopndent No.1, complainant, who is the contesting respondent in this petition. Shri More, APP waives notice for the Respondent -State of Maharashtra. Notice to other private respondents is not necessary and the same is dispensed with.

3. All these petitions can be disposed of by common judgment as they involve identical question of

law and fact.

4. The petitioner has been named as accused in each of the separate complaint filed by respondent No.1 under the provisions of section 138 of the Negotiable Instruments Act. The petitioner has been named as accused being director of M/s. Mansukh Industries Limited, which is also named as accused, which company in turn is the partner in M/s. P. Abhavkumar & Company, which is also named as accused, having issued cheques drawn for and on its behalf. The cheques in question are admittedly signed by person incharge of the affairs of M/s. P. Abhavkumar & Co.. Admittedly, the petitioner is not the signatory to any of these cheques. In other words, the petitioner has been named only becuase he was director in M/s. Mansukh Industries Ltd., which in turn was partner in M/s. P. Abhavkumar & Company.

5. In the present petitions, the petitioner contends that the basis on which the petitioner was named as one of the accused in the complaints filed by respondent No.1 is non-existing. It is stated that the petitioner was not the director of M/s. Mansukh Industries Ltd., on the relevant date and had resigned

much earlier thereto. The fact that the petitioner had resigned as director of M/s. Mansukh Industries Ltd., is established from the resignation, which was duly accepted and notified by the registrar of the companies. This position is not in dispute. If it is so, then the petitioner cannot be prosecuted in respect of the alleged offence, assunming that the complainant would be justified in proceeding against M/s. Mansukh Industries Ltd., which is a partner in M/s. P. Abhavkumar and Co. and on whose behalf the cheques in question have been issued. In other words, the petitioner is neither signatory to the cheques in dispute nor can be said the person incharge of the affairs of M/s. P. Abhavkumar and company, on whose behalf the cheques were issued. As the petitioner was not the director of M/s. Mansukh Industries Ltd., on the relevant date, even for that reason, the petitioner cannot be implicated in the alleged offence. Taking any view of the matter, the criminal action against the petitioner will have to be quashed.

6. The petitioner has rightly relied on the decision of this court, reported in 1998 (4) LJ-654, in the case of Kusum A. Bardeskar & Ors vs. Babulal Tarachand Shah & Anr., which has taken the view that a

person who ceases to be a director of the company on the date of incident, no criminal action can be proceeded against him. Reliance is also rightly placed on the observations made in the order passed by this court between the same parties in a companian criminal action, which was questioned before this court in criminal writ petition No. 45/2002 decided on July 25, 2002. It is not necessary for me to go into the question whether the petitioner can claim any benefit of that order or it is confined only to the criminal case No. 425/S/1999.

7. Counsel for the respondent No. 1, complainant, submits that the petitioner was a non -executive director of the said M/s. Mansukh Industries Ltd.. Even so it will make no difference to the aforesaid conclusion reached by me.

8. As mentioned earlier, taking any view of the matter, criminal action as against the petitioner cannot be proceeded with. Hence, all these petitions succeed in terms of prayer clause (a).

9. Order accordingly.

. . . . .